

LEH-35-98  
U.S. Ser. No. 09/493,891**REMARKS**

Following the reconsideration of the original restriction requirement and rejoicing of Claims 1-2 by the Examiner, and entry of the present amendment, Claims 1-3, 5-8, and 16-23 remain in the application for consideration. Claims 1-2 and 16 have been amended and Claim 9 has been canceled without prejudice to or disclaimer of the subject matter therein. The amendments and cancellation were made notwithstanding the Applicants' belief that the canceled claims would have been allowable, and without acquiescing to any of the Examiner's arguments, and without waiving the right to prosecute in the future the canceled (or similar) claims in another application, for the purpose of furthering the Applicants' business goals and expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG).<sup>1</sup>

Claim 1 has been amended to more clearly describe the schematic, Claim 2 has been amended to correct a typographical error, and Claims 1 and 16 have been amended to more clearly define the product. Support for these amendments can be found throughout the specification, as for example, on page 12, lines 5-6 and on page 5, line 13 through page 6, line 8 and page 13, lines 7-15.

In the Office Action dated June 1, 2005, the Examiner made a number of rejections. For clarity, the objections and rejections at issue are set forth by number in the order they are herein addressed:

1. Claims 1, 2, and 6-22 are rejected under 35 USC 112, second paragraph, as being indefinite;
2. Claims 1 and 2 are rejected under 35 USC 112, first paragraph, as failing to comply with the enablement requirement;
3. Claims 9 and 16-17 are rejected under 35 USC 102(a) as anticipated by Martey et al. (CAPLUS abstract 1998: 529836, 1998);
4. Claim 9 is rejected under 35 USC 102(b) as anticipated by Akanuma et al. (J. Biochem., 1978);

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<sup>1</sup> 65 Fed. Reg. 54603 (September 8, 2000).

LEH-35-98  
U.S. Ser. No. 09/493,891

5. Claims 1-3, 5, 6, 9, 16 and 17, are rejected under 35 USC 103(a) as obvious over Heindel (Bioconjugate Chem., 1994) in view of Diener (US Patent No. 4,415,552) and further in view of either Akanuma et al. (J. Biochem., 1978) or Martey et al. (CAPLUS abstract 1998: 529836, 1998);
6. Claims 3, 5, 9, 16, 20 and 23 are rejected under 35 USC 103(a) as obvious over Heindel (Bioconjugate Chem., 1994) in view of Weinshenker (US Patent No. 5,068,227) and further in view of either Akanuma et al. (J. Biochem., 1978) or Martey et al. (CAPLUS abstract 1998: 529836, 1998);
7. Claims 3, 5, 9, 16, 20 and 23 are rejected under 35 USC 103(a) as obvious over Heindel (Bioconjugate Chem., 1994) in view of Elson (US Patent No. 5,888,988) and further in view of either Akanuma et al. (J. Biochem., 1978) or Martey et al. (CAPLUS abstract 1998: 529836, 1998);
8. Claims 3, 5, 8, 9, 16, 19, and 23 are rejected under 35 USC 103(a) as obvious over Heindel (Bioconjugate Chem., 1994) in view of Hattori et al. (J. Agric. Food Chem., 1995) and further in view of either Akanuma et al. (J. Biochem., 1978) or Martey et al. (CAPLUS abstract 1998: 529836, 1998); and
9. Claims 3, 5, 7, 9, 16, 18, 22 and 23 are rejected under 35 USC 103(a) as obvious over Heindel (Bioconjugate Chem., 1994) in view of Mill (US Patent No. 4,003,972) and further in view of Streitwieser et al. (Introduction to Organic Chemistry, 1976).

These actions are addressed below in the order listed above.

Response to Office Action  
Page 9 of 21

LEH-35-98  
U.S. Ser. No. 09/493,891

**1. Claims 1, 2, and 16-22 are definite.**

The Examiner rejected Claims 1, 2, and 16-22 under 35 USC 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention (Office Action, pages 2-3).

The Examiner found it unclear if the structure depicted in Claim 1 was meant to be exactly representative, a schematic drawing, or something else. Applicants have amended Claim 1 to clarify that the structure is a schematic.

The Examiner rejected Claim 2 on the basis of two typographical errors. Applicants thank the Examiner for pointing out these inadvertent errors, and have amended Claim 2 to correct these errors.

The Examiner rejects Claim 16 on the basis that the specification does not describe the full range of what is to be excluded. Applicants have amended Claim 16 to more clearly define the claimed subject matter, and point out that the specification on page 5 provides a definition of "conjugation activators" and "chemical promoters" and a publication where such compounds are described. Therefore, the metes and bounds of Claim 16, and thus of Claims 17-22 which depend from Claim 16, are clear to one of ordinary skill in the art (MPEP 2173.05(i), citing *In re Schechter*, 205 F.2d 185, 98 USPQ 144 (CCPA 1953). See also the citation to *In re Wakefield*, 422 F.2d 897, 899, 904, 164 YSOQ 636, 638, 641 (CCPA 1970), in which a claim which recited the limitation "said homopolymer being free from the proteins, soaps, resins, and sugars present in natural Hevea rubber" in order to exclude characteristics of the prior art was considered definite because each recited limitation was definite).

Applicants believe that the claims as amended are definite, and therefore respectfully request the withdrawal of this rejection of the claims.

**2. Claims 1 and 2 are enabled.**

The Examiner rejected Claims 1 and 2 are rejected under 35 USC 112, first paragraph, as failing to comply with the enablement requirement (Office Action, pages 3-4).

The Examiner asserted that if the structure in Claim 1 is meant to be exactly representative, then the specification does not appear to be enabling for preparation of such a

Response to Office Action  
Page 10 of 21

LEH-35-98  
U.S. Ser. No. 09/493,891

compound. As discussed above, Applicants have amended Claim 1 to more clearly indicate that the structure is a schematic drawing. Therefore, the Examiner's assertions are moot.

For this reason, Claims 1 and 2 are enabled, and Applicants respectfully request withdrawal of this rejection.

**3. Claims 9 and 16-17 are not anticipated by Martey.**

The Examiner rejected Claims 9 and 16-17 under 35 USC 102(a) as anticipated by Martey et al. (CAPLUS abstract 1998: 529836, 1998) (Office Action, pages 4-5).

The Examiner agrees with Applicants' previous argument that a properly applied reference must be enabling, but further asserts that a reference is presumed operable until Applicants provide facts rebutting the presumption of operability (citing to *In re Sasse*, 629 F.2d 675, 207 USPQ 107, CCPA 1980).

First, Applicants have canceled Claim 9<sup>2</sup>, so the rejection of this claim is moot.

Next Applicants note that Martey is not a proper reference. Applicants disclosure of their own work within the year before the application filing date cannot be used against them under 102(a) (MPEP 2132.01). The present application claims priority to a provisional application filed on January 28, 1999, whereas the publication date of Martey is August 23, 1998. Because the authors of Martey (Christine A. Martey and Ned D. Heindel) are also inventors of the present application, and because Martey was published less than one year prior to the filing date of the application, the reference cannot be used against Applicants since it neither a proper 102(a) reference (as it is not by others and if it describes Applicants invention, which Applicants do not believe that it does, it could not have been described before the invention by Applicants) nor a proper 102(b) reference (as it was not published more than one year before the priority date).

Applicants do not believe a specific declaration is necessary under these facts to establish that the article describes Applicants' own work, but they are prepared to do so upon request.

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<sup>2</sup> Claim 9 was canceled, notwithstanding the Applicants' belief that this claim would have been allowable, without acquiescing to any of the Examiner's arguments, and without waiving the right to prosecute the original (or similar) claim in another application, for the purpose of furthering the Applicants' business goals and expediting the patent application process.

LEH-35-98  
U.S. Ser. No. 09/493,891

For this reason, Claims 16-17 are not anticipated by Martey, and Applicants respectfully request withdrawal of this rejection of the claims.

**4. Claim 9 is not anticipated by Akanuma.**

The Examiner rejected Claim 9 under 35 USC 102(b) as anticipated by Akanuma et al. (J. Biochem., 1978) (Office Action, pages 5-6).

The Examiner asserts that Akanuma states that "CM-cellulose...was also converted to its hydrazide derivative," and that "Step I" is explicitly described as "lactone formation." The Examiner further states that while the reference may not provide analytical data for the CM-cellulose lactone, all indications are that this derivative was prepared, and the burden is on Applicants to show a novel or unobvious difference between the claimed product and the product of the prior art (citations omitted).

Applicants have canceled Claim 9<sup>3</sup>, so the rejection of this claim is now moot.

**5. Claims 1-3, 5, 6, 9, 16 and 17 are not obvious over Heindel and Diener, and either Akanuma or Martey.**

The Examiner rejected Claims 1-3, 5, 6, 9, 16 and 17 under 35 USC 103(a) as obvious over Heindel (Bioconjugate Chem., 1994) in view of Diener (US Patent No. 4,415,552) and further in view of either Akanuma et al. (J. Biochem., 1978) or Martey et al. (CAPLUS abstract 1998: 529836, 1998) (Office Action, pages 6-9).

The Examiner asserts that Heindel teaches the preparation of CM-dextran lactone by thermal dehydration of the acid form of CM-dextran in an anhydrous non-nucleophilic solvent, but admits that the reference does not teach preparation of CM-cellulose lactone. The Examiner further asserts that Diener teaches that CMC having a MW of about 250 kDa (DP of about 1100) is useful for the attachment of allergens and hapetens, and the preparation of CMC conjugates

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<sup>3</sup> Claim 9 was canceled, notwithstanding the Applicants' belief that this claim would have been allowable, without acquiescing to any of the Examiner's arguments, and without waiving the right to prosecute the original (or similar) claim in another application, for the purpose of furthering the Applicants' business goals and expediting the patent application process.

LEH-35-98  
U.S. Ser. No. 09/493,891

using a carbodiimide activator. Finally, the Examiner asserts that from either Akanuma and Martey it is known that it is possible to prepare a CM-cellulose lactone.

The Examiner admits that the reference (presumably Heindel) is silent with respect to using starting material in a fine powder, and the presence of carboxylate salts, but concludes that it would be obvious to use a fine powder to facilitate faster dissolution or provide more reactive surface area, and to maximize the active acid form and minimize the amount of the inactive salt. The Examiner also asserts that is unclear how dextran's water-solubility is relevant to the instant process.

Applicants first note that Claim 9 has been canceled<sup>4</sup>, so the rejection as to this claim is moot.

Applicants next note that Martey is not a proper reference, as described above, and Applicants respectfully request withdrawal of the rejection of the claims over this reference.

Applicants next note that Heindel does not teach or even suggest a method for preparing lactones of polysaccharide carboxylic acids by thermal dehydration from the polysaccharide carboxylic acids listed in Claim 3, and this deficiency is not remedied by Deiner, even in view of Akanuma.

Three basic criteria must be met to establish a *prima facie* case of obviousness (MPEP 2143). First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations.

Deiner describes neither a method of preparing lactones of polysaccharide carboxylic acids nor a polysaccharide carboxylic acid lactone product. Instead, Deiner requires the use of a **water-soluble polysaccharide**, in contrast to the claimed method which employs an insoluble suspension of the polysaccharide in a non-reacting solvent. Deiner uses a **chemical additive** (a carbodiimide) as a coupling promoter, and leaves behind a diamine linking agent. (see column 4,

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<sup>4</sup> Claim 9 was canceled, notwithstanding the Applicants' belief that this claim would have been allowable, without acquiescing to any of the Examiner's arguments, and without waiving the right to prosecute the original (or similar) claim in another application, for the purpose of furthering the Applicants' business goals and expediting the patent application process.

LEH-35-98  
U.S. Ser. No. 09/493,891

line 4-39). No lactones are prepared by Diener's method and every linkage of therapeutics to the carboxyl moiety requires both a promoter and a residual diamino linker.

Moreover, as Applicants noted in their previous Response, Akanuma does not describe or even suggest thermal dehydration of CM-dextran and CM-cellulose. Instead, Akanuma describes lactone formation by swelling the H-form of CM-Sephadex beads in dimethylformamide, adding DCC to the suspension (or thionylchloride and phosphorous pentachloride in its place), and then incubating the reaction overnight at room temperature (page 1358, second column). Thus, there is no heating step. Moreover, DCC, thionylchloride, and phosphorous pentachloride are powerful dehydrating chemicals. So the dehydration reaction described by Akanuma occurs chemically, and not thermally.

Therefore, even the combination of all three references does not teach or suggest all the claim limitations of the method of Claim 3. Moreover, this combination of references does not provide any expectation of success in achieving the method of Claim 3. Finally, the Examiner asserts that from Akanuma it is known that it is possible to prepare a CM-cellulose lactone. However, simply being able to prepare a compound does not provide a motivation to modify Heindel to achieve the method of Claim 3. Therefore, the Examiner has not met all three requirements to establish a *prima facie* case of obviousness, and the cited references do not make Claim 3 obvious. Because Claims 5-8 depend from Claim 3, these claims are also not obvious over the references.

The combination of references also does not teach or suggest all of the claim limitations of either Claim 1 or Claim 16, which are directed to subject matter including product which is free of residual chemical activators. The Examiner asserts that Diener taught that the molecular weight of about 250 kDa was useful in preparing allergen-CMC conjugates. However, both Akanuma and Diener describe the use of chemical activators or promoters, and Diener never even produces a lactone product. Thus, the combination of Heindel, Akanuma, and Diener do not teach or suggest all the claim limitations of either Claim 1 nor of Claim 16, and because they depend from Claim 1 or 16, of Claim 2 or Claim 17, respectively. Nor is there any expectation of success that combining these three references would achieve the claimed products of Claims 1 or 16 (and thus of dependent Claims 2 and 17). Again, the Examiner has not met all three

Response to Office Action  
Page 14 of 21

LEH-35-98  
U.S. Ser. No. 09/493,891

requirements to establish a *prima facie* case of obviousness, and therefore these references do not make Claims 1-2 and 16-17 obvious.

For all the reasons above, Applicants respectfully request the withdrawal of this rejection of these claims.

**6. Claims 3, 5, 9, 16, 20 and 23 are not obvious over Heindel and Weinshenker, and either Akanuma or Martey.**

The Examiner rejected Claims 3, 5, 9, 16, 20 and 23 under 35 USC 103(a) as obvious over Heindel (Bioconjugate Chem., 1994) in view of Weinshenker (US Patent No. 5,068,227) and further in view of either Akanuma et al. (J. Biochem., 1978) or Martey et al. (CAPLUS abstract 1998: 529836, 1998) (Office Action, page 9).

The Examiner asserts that Heindel, Akanum, and Martey teach as described previously, and that Weinshenker teaches the covalent attachment of biorecognition molecules to cyclodextrins. The Examiner concludes that because cyclodextrin is a 1, 4-linked polysaccharide, a "CM substituent at position 2 or 3 would be expected to lactonize under these conditions similar to CM-cellulose."

Applicants first note that Claim 9 has been canceled<sup>5</sup>, so the rejection as to this claim is moot.

Applicants next note that Martey is not a proper reference, as described above, and Applicants respectfully request withdrawal of the rejection of the claims over this reference.

With respect to claims 3, 5, 16, 20 and 23, the Examiner has once again not met all three criteria to establish a *prima facie* case of obviousness. Weinshenker describes linking a heterobifunctional spacer (usually an omega-aminocarboxylic acid) to a water soluble cyclodextrin in solution by means of both a carbodimide and an N-hydroxysuccinimide employed as promoters. No lactones are prepared, none were detected as potential intermediates, and in every case a residual small molecule is left behind between the

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<sup>5</sup> Claim 9 was canceled, notwithstanding the Applicants' belief that this claim would have been allowable, without acquiescing to any of the Examiner's arguments, and without waiving the right to prosecute the original (or similar) claim in another application, for the purpose of furthering the Applicants' business goals and expediting the patent application process.

LEH-35-98  
U.S. Ser. No. 09/493,891

carbohydrate and the physiologically active compound. Moreover, Weinshenker describes cyclodextrin derivatives coupled to biorecognition molecules and that the cyclodextrin so coupled provides a cavity or complexation zone into which **active agents** such as labels, drugs and the like may be incorporated; and that the **active agent** forms a noncovalently bonded inclusion complex within the cavity of the cyclodextrin (Col 1, line 65 to Col 2, line 6).

Thus, there is no description or even suggestion in Weinshenker that a carboxy- or carboxy-methyl-cyclodextrin would be expected to lactonize under conditions similar to CM-cellulose. Moreover, the system described by Weinshenker, in which a **biorecognition molecule** is coupled by means of **promoters** to cyclodextrin derivatives forms a **cavity or complexation zone** into which **active agents** are **incorporated**, is **VERY DIFFERENT** from the polysaccharide compounds described by the Applicants, in which a therapeutic agent is conjugated to a carboxy- or carboxymethyl polysaccharide utilizing a reactive lactone of the polysaccharide. Thus, in contrast to the Examiner's conclusion, there is absolutely no motivation to combine Weinshenker with Heindel and Akanuma to achieve the claimed methods or products. Moreover, Weinshenker does not describe or even suggest preparation of lactones, and the conditions under which CM-cellulose lactonize by **thermal dehydration** (as is claimed in Claims 3 and 5) are also not provided by any of the cited references, so even the combination of all three references does not describe or teach all of the claim limitations of either the claimed methods or products. Finally, the combination of these three references provides no expectation of success of the claimed subject matter.

For these reasons, the cited combination of references do not make Claims 3, 5, 16, 20, and 23 obvious, and Applicants respectfully request withdrawal of this rejection of these claims.

**7. Claims 3, 5, 9, 16, 20 and 23 are not obvious over Heindel and Elson, and either Akanuma or Martey.**

The Examiner rejected Claims 3, 5, 9, 16, 20 and 23 under 35 USC 103(a) as obvious over Heindel (Bioconjugate Chem., 1994) in view of Elson (US Patent No. 5,888,988) and further in view of either Akanuma et al. (J. Biochem., 1978) or Martey et al. (CAPLUS abstract 1998: 529836, 1998) (Office Action, page 10).

Response to Office Action  
Page 16 of 21

LEH-35-98  
U.S. Ser. No. 09/493,891

The Examiner asserts that Heindel, Akanuma, and Martey teach as previously described, and that Elson teaches that CM-chitosan is useful for covalent attachment of therapeutically active compounds, which are prepared by carbodiimide-facilitated coupling. The Examiner concludes that because CM-[chitosan] is a 1, 4-linked polysaccharide, a CM substituent at position 2(N) would be expected to lactonize under these conditions, similar to CMC.

Applicants first note that Claim 9 has been canceled<sup>6</sup>, so the rejection as to this claim is moot.

Applicants next note that Martey is not a proper reference, as described above, and Applicants respectfully request withdrawal of the rejection of the claims over this reference.

Next, Applicants note that Elson does not describe the formation of lactone products, and as the Examiner states, describes using coupling compounds to link drugs to carbohydrates, with chemical residues left behind (see, for example, See column 3, line 10). Thus, there is no description or even suggestion in Elson that carboxymethylchitosan would be expected to lactonize under conditions similar to CM-cellulose. Note that the conditions under which CM-cellulose would lactonize by **thermal dehydration** (as is claimed in Claims 3 and 5) are also not provided by this combination of references. Thus, there is no motivation to combine Elson with Heindel and Akanuma to achieve the claimed methods or products. Moreover, Elson does not describe or even suggest preparation of lactones, and even the combination of references does not describe a method for the synthesis of a lactone of polysaccharide carboxylic acids where the polysaccharide carboxylic acid is carboxymethylchitosan, nor do they describe a lactone product synthesized from carboxymethylchitosan. Thus, the combination of all three references does not describe or teach all of the claim limitations of either the claimed methods or products. Finally, even the combination of these three references provides absolutely no expectation of success of the claimed subject matter.

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<sup>6</sup> Claim 9 was canceled, notwithstanding the Applicants' belief that this claim would have been allowable, without acquiescing to any of the Examiner's arguments, and without waiving the right to prosecute the original (or similar) claim in another application, for the purpose of furthering the Applicants' business goals and expediting the patent application process.

LEH-35-98  
U.S. Ser. No. 09/493,891

For these reasons, the combination of the three cited references do not make Claims 3, 5, 16, 20, and 23 obvious, and Applicants respectfully request withdrawal of this rejection of these claims.

**8. Claims 3, 5, 8, 16, 19, and 23 are not obvious over Heindel and Hattori, and either Akanuma or Martey.**

The Examiner rejected Claims 3, 5, 8, 9, 16, 19, and 23 under 35 USC 103(a) as obvious over Heindel (Bioconjugate Chem., 1994) in view of Hattori et al. (J. Agric. Food Chem., 1995) and further in view of either Akanuma et al. (J. Biochem., 1978) or Martey et al. (CAPLUS abstract 1998: 529836, 1998) (Office Action, pages 10-11).

The Examiner asserts that Heindel, Akanuma and Martey teach as previously described, and that Hattori teaches covalent attachment of a protein to CM-starch via carbodiimide coupling. The Examiner admits that Heindel does not teach the use of CM-starch. The Examiner then concludes that it would have been obvious to prepare CM-starch lactone by the method of Heindel to avoid the disadvantages of a carbodiimide coupling.

Applicants first note that Claim 9 has been canceled<sup>7</sup>, so the rejection as to this claim is moot.

Applicants next note that Martey is not a proper reference, as described above, and Applicants respectfully request withdrawal of the rejection of the claims over this reference.

Next, Applicants note that Hattori describes using a carboxymethylated soluble starch with a carbodiimide, a coupling agent. In contrast to the claimed invention, Hattori does not describe the formation of a lactone as either a product or as an intermediate. In fact, the motivation for Hattori's study was to "raise the thermal stability of starch" (page 2007) by conjugation with whey protein. Hattori claims to have raised the peak temperature ( $T_p$ ) by a mere 8°C to 50.7°C, as determined by DSC measurement. Given these results, that efforts to increase thermal stability of the conjugated CM-starch resulted in an increase to only about 51°C,

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<sup>7</sup> Claim 9 were canceled, notwithstanding the Applicants' belief that this claim would have been allowable, without acquiescing to any of the Examiner's arguments, and without waiving the right to prosecute the original (or similar) claim in another application, for the purpose of furthering the Applicants' business goals and expediting the patent application process.

LEH-35-98  
U.S. Ser. No. 09/493,891

one of ordinary skill in the art would NOT have anticipated that dry pulverized carboxymethylated starch would survive the conditions of lactonization by thermal dehydration, as is claimed. It was only by doing the experiments that Applicants discovered that CM-starch could in fact not only survive thermal dehydration, but also form a lactone product.

Thus, in contrast to the Examiner's assertions, Hattori in fact teaches away from the claimed invention, and cannot be used as a basis to reject these claims as obvious. Proceeding contrary to accepted wisdom in the art is evidence of non-obviousness (MPEP 2145 X. D., citing to *In re Hedges*, 783 F2d 1038, 228 USPQ 685 (Fed Cir 1986), where applicant's claimed process at a higher temperature was contrary to accepted wisdom because the prior art as a whole suggested using lower temperatures for optimum results). Moreover, Hattori teaches away from any expectation of success. Finally, even the combination of the cited references does not teach all of the elements of the claims. Therefore, the Examiner has failed to make a *prima facie* case of obviousness, and the Applicants respectfully request the withdrawal of the rejection of these claims on this basis.

**9. Claims 3, 5, 7, 9, 16, 18, 22, and 23 are not obvious over Heindel, Mill, and Streitwieser.**

The Examiner rejected Claims 3, 5, 7, 9, 16, 18, 22 and 23 under 35 USC 103(a) as obvious over Heindel (Bioconjugate Chem., 1994) in view of Mill (US Patent No. 4,003,972) and further in view of Streitwieser et al. (Introduction to Organic Chemistry, 1976) (Office Action, pages 11-12).

The Examiner asserts that Heindel teaches as described previously, and that Mill teaches that polysaccharides are useful for preparing conjugates comprising a variety of organic substances. The Examiner admits that the conjugates taught by Mill are prepared using a carbodiimide coupling agent. The Examiner further asserts that Streitwieser teaches that lactone formation is particularly favored when it results in a 5- or 6-membered ring. The Examiner concludes that it would have been obvious to use the process of Heindel to prepare lactones of the acidic polysaccharides taught by Mill because Mill taught that these polysaccharides could be used to prepare conjugates using a carbodiimide coupling agent, and that success would be

Response to Office Action  
Page 19 of 21

LEH-35-98  
U.S. Ser. No. 09/493,891

expected because reaction of the acid at position 6 and the hydroxyl at position 3 would result in a 5-membered ring.

Applicants first note that Claim 9 has been canceled<sup>8</sup>, so the rejection as to this claim is moot.

Applicants next note that Mill does not describe or even suggest preparing a lactone of polysaccharides suitable for the conjugates prepared by Mill, which include "pectin, pectic acid, alginic acid celluronic acid, and carrageenan" (col 1, lines 25-27). In contrast, Mill describes processes requiring a first reaction with a coupling agent, and a second (or third) reaction with an active component. Moreover, Mill actually states that all the methods described in the application "have the advantage that they can be carried out in **aqueous solution at relatively low temperatures**;" and that "[w]hichever of the aforesaid methods is used, the desired conjugate is in general obtained as an aqueous solution." (col 2, lines 59-68). In fact, from the Examples the unspecified reaction temperatures appear to be room temperature. Because Mill describes as advantageous both the **aqueous solution** and the **relatively low temperature**, Mill also teaches away from the claimed invention, in which lactones are prepared by **thermal dehydration in a solvent**. Therefore, Mill cannot be used as a basis to reject these claims as obvious.

Even if the Examiner's assertions as to what Streitweiser teaches are true (and Applicants have been unable to obtain a copy of this reference), it does not make up for the deficiencies of Mill.

Therefore, for these reasons, the Examiner has not made a *prima facie* case of obviousness, and Applicants respectfully request the withdrawal of the rejection of these claims over these references.

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<sup>8</sup> Claim 9 were canceled, notwithstanding the Applicants' belief that this claims would have been allowable, without acquiescing to any of the Examiner's arguments, and without waiving the right to prosecute the original (or similar) claim in another application, for the purpose of furthering the Applicants' business goals and expediting the patent application process.

LEH-35-98  
U.S. Ser. No. 09/493,891

### CONCLUSION

In view of the claim cancellations and amendments described in above, and the Remarks presented above, Applicants now submit that the application is in condition for allowance, and respectfully request issuance of a timely Notice of Allowance.

If the Examiner has any questions or feels that a discussion with Applicants' representative would expedite prosecution, the Examiner is invited and encouraged to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

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Response to Office Action  
Page 21 of 21